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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JESS MCDONALD,

Petitioner,

vs.

MARCEL YOUAKIM, *et al.*,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF ALABAMA, CALIFORNIA, COLORADO, THE DISTRICT OF COLUMBIA, IDAHO, KANSAS, MARYLAND, MONTANA, NEVADA, NEW JERSEY, NORTH CAROLINA, OKLAHOMA, AND PENNSYLVANIA AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF ALABAMA, CALIFORNIA, COLORADO, THE DISTRICT OF COLUMBIA, IDAHO, KANSAS, MARYLAND, MONTANA, NEVADA, NEW JERSEY, NORTH CAROLINA, OKLAHOMA, AND PENNSYLVANIA AS *AMICI CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTEREST OF AMICI CURIAE

The above-listed States and the District of Columbia respectfully submit this brief as amici curiae in support of the petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.[1] Amici are states[2] that each administer numerous entitlement

[1] A Petition for Writ of Certiorari was filed on April 16, 1996,by defendant Jess McDonald, the Director of the Illinois Department of Children and Family (continued...)

programs subject to the Due Process Clause of the United States Constitution. Amici submit this brief to alert the Court to the wide-ranging and potentially catastrophic consequences that would follow if the Seventh Circuit's decision, a decision that drastically undermines important decisions[3] of this Court recognizing and protecting state sovereignty, is allowed to stand. While the case at bar involves payments to a few thousand recipients by one agency in one state, the holding itself can logically be applied to every conceivable entitlement program run by countless state and local agencies throughout the country.

The Seventh Circuit's interpretation of the Due Process Clause, requiring a state to conduct individualized eligibility determinations for all existing recipients before that state may make any changes in its own entitlement programs, provides a new and significant barrier to the current trend of welfare reform. The uncertainty in due process jurisprudence created by the ruling, as well as the administrative

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[1](...continued)

Services ("DCFS" or "the Department") (cited herein as "Petition" or "Pet."). Pursuant to Rule 37.5, the consent of the parties to file this brief is not required, given that the brief is presented on behalf of 12 states and the District of Columbia, and is submitted by the Attorneys General of those states and the Corporation Counsel of the District of Columbia.

[2] Congress has recognized that the District of Columbia shares the interests of the states in providing benefits under the Social Security Act. See 42 U.S.C. § 1301(a)(1).

[3] As set forth in Defendant Jess McDonald's petition for certiorari, those decisions include, *inter alia*, Atkins v. Parker, 472 U.S. 115 (1985), Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982), and Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U.S. 441 (1915). Pursuant to Rule 37.1, the amici here will not restate the legal arguments presented in the Petition, but instead provide this Court only with additional relevant information that has not already been presented.

burdens it places on the states, will chill state efforts to reform welfare services. States that proceed with reform efforts will be shackled by the excessive administrative process now required for thousands of former recipients, and will be required to defend against the inevitable federal lawsuits challenging the particular characterization of any reform scheme and the contours of the process due. In addition, the public interest will be thwarted as states, often conceived of as responsive to the needs of the local citizenry, become less responsive due to the resulting administrative and fiscal burdens. Finally, the Seventh Circuit's decision corrupts the time-honored principles of federalism and comity by diminishing the sovereign power of the states. Because the above-listed States share an interest in proceeding with necessary reforms, protecting the public interest, and maintaining undiminished their own sovereign power, they respectfully urge this Court to grant the writ of certiorari, and to reverse the decision below.

I.
THE SEVENTH CIRCUIT'S DECISION, IF ALLOWED TO STAND UNTESTED, WILL CHILL SOCIAL WELFARE REFORM AT THE VERY MOMENT THAT CONGRESS HAS SHIFTED RESPONSIBILITY FOR SUCH REFORM TO STATE GOVERNMENTS

The current shift in responsibility for social welfare entitlement programs from the federal government to the states is unparalleled in scope and concentration. Robert Pear, Altered States; Shifting Where the Buck Stops, N.Y. Times, Oct. 29, 1995, § 4 at 1. Because of this shift, state executive officials and legislatures are now re-examining entitlement programs in their entirety, at times designing substantial reforms, and at times creating new programs to respond to changes in federal legislation. Id. Even without the shift from federal control to state responsibility, state governments throughout the country have begun to re-evaluate social welfare entitlement programs in response to a number of converging social and economic factors. Sam Howe Verhovek, Welfare in Transition; The National

Picture; States are Already Providing Glimpse at Welfare's Future, N.Y. Times, Sept. 21, 1995, at A1. In other words, federal policy, as well as the general social and economic climate, have created a situation in which states are currently re-evaluating social welfare entitlement programs in unprecedented numbers, and are doing so with an eye to drastic and far-reaching reforms aimed at providing new incentives for social welfare beneficiaries.

In the midst of all of this activity, the United States Court of Appeals for the Seventh Circuit handed down the decision below, a decision that has the potential of impeding the very arena--state government--thought by Congress to be the cure for federal gridlock with regard to reforms of similar programs. See, e.g., 142 Cong. Rec. S180 (daily ed. Jan. 22, 1996) (statement of Sen. Specter). Because the decision below represents a significant departure from this Court's due process jurisprudence, the very existence of the decision creates significant uncertainty as to the permissible scope of social welfare reform. Thus, legislatures and executive officials will be reluctant to undertake meaningful and effective reform in this arena without further guidance from this Court. In addition, the decision, if allowed to stand, has the potential of substantially burdening any future reform efforts to such an extent that state lawmakers may, in the end, retreat from current activities out of a reluctance to enter into complicated and costly administrative procedures, procedures which may themselves require further federal court intervention to discern.

A. Departure From Traditional Due Process Jurisprudence Will Chill Reform Efforts As States Can No Longer Be Certain As To Constitutional Limitations on Social Welfare Reform

As set forth in the petition for certiorari, Pet., § I, the Seventh Circuit's decision is in stark contrast to this Court's due process jurisprudence, which had previously been interpreted to permit states "to make substantive changes in the law of entitlement to public

benefits" without first providing individualized hearings for each and every citizen potentially affected by the change in law. See Richardson v. Belcher, 404 U.S. 78, 81 (1971). Accord Atkins v. Parker, 472 U.S. 115 (1985); Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982); Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U.S. 441 (1915). Without review of the Seventh Circuit's decision by this Court, state legislators and executive officials currently involved in the reforms described above will have no way of knowing for certain whether proposed reform programs comply with the Due Process Clause of the United States Constitution. Clearly, this state of affairs is unacceptable, and as a policy matter has the potential of drastically slowing any progress on social welfare reform currently being developed at the state level.

B. The Administrative Burdens Placed On States By The Seventh Circuit's Decision Will Unnecessarily Chill The Current Climate Of Reform

The Seventh Circuit's decision forces state policy makers contemplating social welfare reform to consider two factors that they need not have considered prior to the decision below. First, they must consider the cost (in time and money) of providing individualized hearings to every citizen potentially affected by a substantive change in state welfare policy. Second, they must consider the cost (again in time and money) of litigation that most certainly will arise as potential beneficiaries challenge, in federal court, the specific contours of the processes provided. Indeed, proceedings in the case below continue on this very issue. While certainly in every case these factors will not bring needed reforms to a halt, reform will be slowed, and in some cases innovative programs will certainly be bypassed. See, e.g., Minnesota State Board for Community Colleges v. Knight, 465 U.S. 271, 285 (1984) ("Government makes so many policy decisions affecting so many people that it would likely grind to a halt were policy-making constrained by constitutional requirements on whose voices must be heard."). Such consequences are so costly

that they should not be imposed on the states unless and until it is clear that they are required by the Due Process Clause.[4] Review by this Court would provide a definitive answer, one that state policy makers could rely on in designing and implementing reforms to social welfare programs.

II.
THE DECISION BELOW, IF LEFT UNTESTED, UNNECESSARILY THWARTS PUBLIC POLICY BY LIMITING THE RESPONSIVENESS OF STATE GOVERNMENTS

Much of the justification for the current shift in responsibility for social welfare programs from the federal government to the states centers around the states' ability to respond quickly and effectively to local conditions and concerns. See Pear, supra. In addition, state governments are likely to better represent the myriad interests of the local community than the relatively few members of Congress that represent each state at the federal level. It is especially true then at the level of state government, that the legislative process truly provides "all the process that is due." Atkins v. Parker, 472 U.S. 115, 129-30 (1985); Logan v. Zimmerman Brush Co., 455 U.S. 422, 432-33 (1982). Clearly, the decision below restricts the responsiveness of state governments to the needs of its citizens. Every reform effort will be stymied and delayed because of the necessity of conducting elaborate eligibility determinations for any citizen affected by a change in state law and policy. Again, the costs to the states and their citizens is great; public policy should not be thwarted in this manner unless and until it is definitively determined by this Court that the Constitution restricts social welfare reform in such a manner.

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[4] In fact, the amici here believe that these negative consequences are not required by the Due Process Clause. See Pet., § I.

III.
THE DECISION BELOW, IF LEFT UNTESTED, CORRUPTS THE TIME-HONORED PRINCIPLES OF COMITY AND FEDERALISM BY IMPERMISSIBLY EXTENDING THE REACH OF FEDERAL LAW

Clearly, the state, as a sovereign power, has the right either to provide social welfare programs or not to provide such programs, and accordingly, it is free to "eliminate [social welfare] payments that were never required by" federal law. See Pet. at 9, citing App. 28a. Prior to the reforms at issue here, the Illinois State legislature, like other state legislatures, determined that it would be appropriate to supplement the federal foster care payment program with a separate state-funded and administered foster care payment program. As the reforms at issue here indicate, the State of Illinois recently determined that such a use of its resources was no longer appropriate, and accordingly, it made a decision to supplement the federal foster care payment program to a much lesser extent than it had previously. The Seventh Circuit, however, found that Illinois could not alter its own independent foster care payment program, unless it first provided eligibility determinations for a federal program that operated in the same arena. See Pet., 4-10. The Seventh Circuit's ruling has transformed the State's decision to supplement a federal program into an irrevocable commitment to serve a select group of citizens. Rather than a requirement to provide due process, which, as this Court has previously held, is provided in such cases by the legislative process itself, Pet., § I, the Seventh Circuit's decision must be viewed as extending federal law in a manner not contemplated by federal statute, and not permissible under a Constitution that embodies the principles of federalism and comity.

CONCLUSION

WHEREFORE, for the reasons stated herein and in the Petition, amici respectfully request that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

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